IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7855 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYABEN PURSHOTTAMBHAI THRO.P.O.A. HOLDER - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR DILIP B RANA for Petitioner No(s).: 1.

MR MR MENGDEY, AGP for Respondent No(s).: 1,2.

MR SHRIKAR H BHATT for Respondent No(s).: 3.

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI

Date : 01/08/2005

ORAL JUDGMENT

In the present petition the petitioner has challenged the order dated 6.7.2000 passed by the Deputy Secretary (Appeals), Revenue Department, Government of Gujarat. By the said order, the Deputy Secretary was

pleased to partially allow the revision application filed by respondent No.3 herein. It was a revision application filed against the order dated 2.5.63 passed by the Mamlatdar and ALT under section 32P of the Bombay Tenancy and Agricultural Lands Act.

2. Against the order passed in the year 1963 by the Mamlatdar, apparently an appeal was filed by respondent No.3 herein some time in the year 1997 as is apparent from the case number. This appeal came to be partially allowed by the impugned order dated 6.7.2000. After making certain observations about the legality of the order passed by the Mamlatdar on 2.5.63, the proceedings were remanded to the Mamlatdar for disposal of the land in terms of the provisions contained in section 32P(2)(c) of the said Act. The Deputy Secretary also observed that the land in question has been sold in favour of other persons who are required to be evicted under section 84C of the said Act. The petitioner has clearly stated in the petition that no opportunity of hearing was given to the petitioner by the Deputy Secretary before passing the impugned order. She has also stated that she was never aware about the passing of the order and only when the notice came to be issued by the Mamlatdar on 10th

February 2005 that she came to know about the order passed by the Deputy Secretary.

3. On 27th June 2005, rule was made returnable on 25th July 2005. Learned AGP as well as Shri Shrikar Bhatt appearing for respondent No.3 were given time for taking instructions. No affidavit has been filed by any of the respondents to controvert the factual averment of the petitioner that the impugned order came to be passed without giving an opportunity of being heard to the petitioner. From the impugned order also it emerges that though two of the opponents before the Deputy Secretary, Shri Chaturbhai Madhurbhai and Parsottambhai Madhurbhai had expired and the appellant therein i.e. respondent No.3 herein was asked to bring their legal heirs on record, no steps were taken in this regard. There is also no mention of service of notice on the petitioner in the proceedings before the Deputy Secretary. I have, therefore, reason to believe that the notice was never served on the petitioner in the proceedings before the Deputy Secretary and the impugned order therefore suffers from legal defect and is required to be quashed and set aside.

4. The order passed by the Mamlatdar on 2.5.63 is being set aside by the Deputy Secretary and the proceedings are being remanded, that too after making certain conclusive observations about the nature of the order passed by the Mamlatdar, the bare necessity was at least to hear the petitioner before passing any adverse order against her.

5. In conclusion, the impugned order dated 6.7.2000 is quashed and set aside and the proceedings are remanded to the Deputy Secretary for fresh consideration after giving an opportunity to the petitioner to represent her case. The Deputy Secretary should also consider whether proceedings can continue in absence of the heirs of the above mentioned deceased parties. With quashing of the order dated 6.7.2000 notice issued by the Mamlatdar on 10th February 2005 shall also stand quashed. Rule is made absolute accordingly with no order as to costs.

6. By an order dated 3rd May 2005, this Court had issued notice on the condition that the petitioner deposits an amount of Rs.15,000/- before this Court. The learned Counsel for the petitioner states that the same amount was deposited by the petitioner. Considering the facts of the case, I find that the amount deposited by the

petitioner should be refunded to the petitioner. The Registry shall return the amount to the petitioner through an account payee cheque to be handed over to the learned advocate for the petitioner.

(Akil Kureshi, J.)

(vjn)